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9 **BEFORE THE**
10 **DIRECTOR OF THE OFFICE OF REAL ESTATE APPRAISERS**
11 **STATE OF CALIFORNIA**

12 **In the Matter of the Accusation Against:**

Case No. C 090413-06

13 **TYLER R. GAYLER**
14 **44489 Town Center Way D156**
15 **Palm Desert, CA 92260**

A C C U S A T I O N

16 **Certified Residential Appraiser License No.**
17 **AR040746**

18 **Respondent.**

19 **Complainant alleges:**

20 **PARTIES**

21 1. Elizabeth Seaters, acting on behalf of the Office of Real Estate Appraisers
22 (Complainant) brings this Accusation solely in her official capacity as Acting Chief of
23 Enforcement for Complainant.

24 2. On or about July 19, 2006, the Director of the Office of Real Estate Appraisers
25 ("Director") issued Certified Residential Appraiser license Number AR040746 to Tyler R. Gayler
26 ("Respondent"). Respondent's real estate appraiser license was in full force and effect at all
27 times relevant to the charges brought herein.

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JURISDICTION

3. This Accusation is brought before the Director of the Office of Real Estate Appraisers ("OREA") under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Code section 11313 requires OREA to adopt and enforce rules and regulations as are determined reasonably necessary to carry out the purposes of the Real Estate Appraisers' Licensing and Certification law.

5. Code section 11314 states, in pertinent part:

The office is required to include in its regulations requirements for licensure and discipline of real estate appraisers that ensure protection of the public interest.

FINES

6. Code section 11316, subdivision (a) states:

The director may assess a fine against a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, course provider, applicant for course provider accreditation, or a person who, or entity that, acts in a capacity that requires course provider accreditation for violation of this part or any regulations adopted to carry out its purposes.

MINIMUM STANDARDS FOR CONDUCT AND PERFORMANCE

7. Code section 11319 states:

Notwithstanding any other provision of this code, the Uniform Standards of Professional Appraisal Practice constitute the minimum standard of conduct and performance for a licensee in any work or service performed that is addressed by those standards. If a licensee also is certified by the Board of Equalization, he or she shall follow the standards established by the Board of Equalization when fulfilling his or her responsibilities for assessment purposes.

8. Code section 11328 states:

To substantiate documentation of appraisal experience, or to facilitate the investigation of illegal or unethical activities by a licensee, applicant, or other person acting in the capacity that requires a license, that licensee, applicant or person shall, upon the request of the director, submit

1 copies of appraisals, or any work product which is addressed by the Uniform Standards of
2 Professional Appraisal Practice, and all supporting documentation and data to the office. This
3 material shall be confidential in accordance with the confidentiality provisions of the Uniform
4 Standards of Professional Appraisal Practice.

5 **COST RECOVERY**

6 9. Code section 11409, subdivision (a) states:

7 Except as otherwise provided by law, any order issued in resolution of a disciplinary
8 proceeding may direct a licensee, applicant for licensure, person who acts in a capacity that
9 requires a license under this part, course provider, applicant for course provider accreditation, or a
10 person who, or entity that, acts in a capacity that requires course provider accreditation found to
11 have committed a violation or violations of statutes or regulations relating to real estate appraiser
12 practice to pay a sum not to exceed the reasonable costs of investigation, enforcement, and
13 prosecution of the case.

14 **REGULATORY PROVISIONS**

15 10. The OREA regulations appear in Title 10, Chapter 6.5, section 3500 et seq., as
16 amended from time to time, of the California Code of Regulations (Regulation.)

17 11. Regulation section 3527, subdivision (a) states, in pertinent part:

18 (a) All applicants for and holders of a license...shall submit written notice to OREA
19 of any change to the following within 10 days on the Change Notification and Miscellaneous
20 Requests Form REA 3011 (Rev. 5/8/00), which is herein incorporated by reference:

- 21 (1) Name;
- 22 (2) Residence telephone number
- 23 (3) Business telephone number
- 24 (4) Residence Address
- 25 (5) Business name or address; or
- 26 (6) Mailing address.

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1 12. Regulation section 3701 states:

2 Every holder of a license under this part shall conform to and observe the Uniform
3 Standards of Professional Appraisal Practice (USPAP) and any subsequent amendments thereto
4 as promulgated by the Appraisal Standards Board of The Appraisal Foundation which standards
5 are herein incorporated into these regulations by reference as if fully set forth herein.

6 13. Regulation section 3702 (a) states, in pertinent part:

7 (a) The Director finds and declares as follows:

8 (1) That the profession of real estate appraisal is vested with a fiduciary
9 relationship of trust and confidence as to clients, lending institutions, and both public
10 and private guarantors or insurers of funds in federally-related real estate transactions
11 and that the qualifications of honesty, candor, integrity and trustworthiness are
12 directly and substantially related to and indispensable to the practice of the appraisal
13 profession ...

14 (3) Every holder of a license to practice real estate appraisal ...shall be
15 required to demonstrate by his or her conduct that he or she possesses the
16 qualifications of honesty, candor, integrity and trustworthiness.

17 14. Regulation section 3705 (a) states:

18 Every appraisal report subject to the Uniform Standards of Professional Appraisal
19 Practice upon final completion shall bear the signature and license number of the appraiser and
20 of the supervising appraiser, if appropriate. The affixing of such signature and number
21 constitute the acceptance by the appraiser and supervising appraiser of full and personal
22 responsibility for the accuracy, content, and integrity of the appraisal under Standards Rules 1
23 and 2 of USPAP.

24 15. Regulation 3721 states, in pertinent part:

25 (a) The Director may issue a citation, order of abatement, assess a fine or private or
26 public reproof, suspend or revoke any license or Certificate of Registration, and/or may deny the
27 issuance or renewal of a license or Certificate of Registration of any person or entity acting in a
28 capacity requiring a license or Certificate of Registration who has:

1 (6) Violated any provision of USPAP

2 (7) Violated any provision of the Real Estate Appraisers' Licensing and
3 Certification Law, Part 3 (commencing with Section 11300) of Division 4 of the
4 Business and Professions Code, or regulations promulgated pursuant thereto; or any
5 provision of the Business and Professions Code applicable to applicants for or
6 holders of licenses authorizing appraisals.

7 **UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP)**

8 **(EFFECTIVE JANUARY 1, 2006)¹**

9 16. USPAP Standard 1 states:

10 In developing a real property appraisal, an appraiser must identify the problem to be
11 solved and the scope of work necessary to solve the problem, and correctly complete research and
12 analyses necessary to produce a credible appraisal.

13 17. USPAP Standard 2 states:

14 In reporting the results of a real property appraisal, an appraiser must communicate
15 each analysis, opinion, and conclusion in a manner that is not misleading.

16 18. The Ethics Rule of USPAP states, in pertinent part:

17 To promote and preserve the public trust inherent in professional appraisal practice,
18 an appraiser must observe the highest standards of professional ethics. ...

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20 **UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP)**

21 **(EFFECTIVE JANUARY 1, 2008)²**

22 19. USPAP Standard 1 states:

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25 1. USPAP is periodically revised: appraisers are responsible for adherence to the edition of USPAP in effect as of the date of report
26 for an appraisal. The 2006-2007 edition of USPAP (effective July 1, 2006, through December 31, 2007), was applicable to the appraisal in this
case, which had a report date of December 20, 2006.

27 2. The 2008-2009 edition of USPAP (effective January 1, 2008, through December 31, 2009), was applicable to the appraisal in this
28 case, which had a report date of May 10, 2008.

1 In developing a real property appraisal, an appraiser must identify the problem to be
2 solved, determine the scope of work necessary to solve the problem, and correctly complete
3 research and analyses necessary to produce a credible appraisal.

4 20. USPAP Standard 2 states:

5 In reporting the results of a real property appraisal, an appraiser must communicate
6 each analysis, opinion, and conclusion in a manner that is not misleading.

7 21. The Ethics Rule of USPAP states, in pertinent part:

8 To promote and preserve the public trust inherent in professional appraisal practice,
9 an appraiser must observe the highest standards of professional ethics. ...

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11 **PROPERTIES APPRAISED**

12 22. On December 20, 2006, Respondent completed a real estate appraisal report for
13 property located at 57226 Castro Road, Desert Hot Springs, California, with a concluded opinion
14 of value at \$530,000.00. The property consisted of a 26,640 square foot lot improved with an
15 approximately 2,098 square foot, 8 rooms, 3 bedrooms, 3 bathrooms, 1 story, home built in 1988.

16 23. On April 10, 2009, Complainant received a request to initiate a disciplinary action
17 against Respondent regarding Respondent's appraisal of the property described in paragraph 22,
18 above.

19 24. On May 10, 2008, Respondent completed a real estate appraisal report for property
20 located at 13019 Caliente Drive, Desert Hot Springs, California, with a concluded opinion of
21 value at \$375,000.00. The property consisted of a 7,200 square foot lot improved with an
22 approximately 1,510 square foot, 5 rooms, 3 bedrooms, 2 bathrooms in the first unit and 1,511
23 square foot, 5 rooms, 3 bedrooms, 2 bathrooms in the second unit one-story, home built in 2008.

24 25. On March 8, 2010, Complainant received a request to initiate a disciplinary action
25 against Respondent regarding Respondent's appraisal of the property described in paragraph 24,
26 above.

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1 **BASIS FOR DISCIPLINE**

2 **FIRST CAUSE FOR DISCIPLINE**

3 **(Failure to Respond or Cooperate in an Investigation of Alleged**
4 **USPAP Violations – 57226 Castro Road, Desert Hot Springs, California)**

5 26. Respondent is subject to disciplinary action under Regulation section 3721,
6 subdivisions (a) (6) and (a) (7), by and through his violation of Regulation sections 3701, 3702
7 subdivisions (a) (1) and (a) (3), and the following USPAP violations:

8 27. Respondent is subject to disciplinary action under Business and Professions Code
9 section 11328 for failing to cooperate with the investigation and provide a copy of the appraisal
10 report and associated workfile for the property located at 57226 Castro Road, Desert Hot Springs,
11 California when requested to do so, as follows:

12 28. On June 23, 2009, the Office of Real Estate Appraisers (OREA) sent a letter
13 pursuant Code section 11328 requesting a copy of the appraisal and the appraisal work file, to be
14 received by Complaint within 30 days of the date of the letter.

15 29. On July 20, 2009, Respondent called and talked to Elizabeth Seaters and asked for
16 an extension on responding to the 30 day demand letter. Respondent stated he does not check his
17 mail and just noticed it. Respondent stated he is very upset and wants an opportunity to talk to
18 someone. An extension was given to the Respondent until July 30, 2009.

19 30. On July 30, 2009, Respondent e-mailed appraisal report, rebuttal to review and
20 MLS listings for subject and residence next door (Comparable Sale Four).

21 31. On August 19, 2009, Respondent was contacted by Bruce Crandall who requested
22 the rest of the work file. Respondent stated he will PDF MLS for remaining properties utilized in
23 review and his report. An e-mail was sent requesting the additional information.

24 32. On September 16, 2009, Respondent was contacted by Bruce Crandall to inform
25 him the requested information was not received. Respondent stated that he had responded to the
26 previous e-mail shortly after it was sent. Respondent requested another e-mail, which was sent.

27 33. On March 8, 2010, a second complaint on the Respondent by the same
28 Complainant was received.

1 34. On March 24, 2010, a demand letter requesting the balance of the demand material
2 for the Castro Road complaint and a demand for the Caleinte property was sent to the
3 Respondent.

4 35. On May 5, 2010, Respondent was called to see why he had not responded to the
5 letter dated March 24, 2010. Respondent stated he did not receive the letter. Respondent asked
6 that the letter be resent to 6147 O'Bannon Road, Las Vegas, Nevada 89146. Respondent has
7 addresses in California and Nevada. Resent 15 day demand letter to Nevada address.

8 36. On May 20, 2010, Respondent called asking for additional time to submit the
9 requested information. Respondent was given until May 24, 2010 to submit the additional
10 information.

11 37. On June 3, 2010, a message was left for the Respondent asking why he had not
12 submitted the requested information from the demand letter he received. Respondent returned
13 call and asked for additional time. Respondent was told the requested information must be
14 submitted by June 7, 2010.

15 38. On July 15, 2010, OREA sent final demand letters to the addresses in Palm Desert,
16 California and Las Vegas, Nevada.

17 39. On July 26, 2010, the final demand letter for the Palm Desert address was returned
18 because of a typographical error in the numerical portion of the address.

19 40. On August 4, 2010, a final demand letter with the correct address was mailed to
20 the Palm Desert address.

21 41. On July 22, 2010, the return receipt card was returned from the post office for
22 Palm Desert address.

23 42. On August 9, 2010, the return receipt card was returned from the post office for
24 the Las Vegas address.

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26 **SECOND CAUSE FOR DISCIPLINE**

27 **(Failure to Respond or Cooperate in an Investigation of Alleged**

28 **USPAP Violations – 13019 Caliente Drive, Desert Hot Springs, CA)**

1 43. Respondent is subject to disciplinary action under Regulation section 3721,
2 subdivisions (a) (6) and (a) (7), by and through his violation of Regulation sections 3701, 3702
3 subdivisions (a) (1) and (a) (3), and the following USPAP violations:

4 44. Respondent is subject to disciplinary action under Business and Professions Code
5 section 11328 for failing to cooperate with the investigation and provide a copy of the appraisal
6 report and associated workfile for the property located at 13019 Caliente Drive, Desert Hot
7 Springs, California when requested to do so, as follows:

8 45. On March 24, 2010 a demand letter requesting the balance of the demand material
9 for the Castro Road complaint and (complaint 1) a demand for the Caleinte property was sent to
10 the Respondent.

11 46. On May 5, 2010, the Respondent was called to see why he had not responded to
12 the letter dated March 24, 2010. Respondent stated he did not receive the letter. Respondent
13 asked that the letter be resent to 6147 O'Bannon Road, Las Vegas, Nevada 89146. Respondent
14 has addresses in California and Nevada. Resent 15 day demand letter to Nevada address.

15 47. On May 20, 2010, Respondent called asking for additional time to submit the
16 requested information. Respondent was given until May 24, 2010 to submit the additional
17 information.

18 48. On June 3, 2010, a message was left for the Respondent asking why he had not
19 submitted the requested information from the demand letter he received. Respondent returned
20 call and asked for additional time. Respondent was told the requested information must be
21 submitted by June 7, 2010.

22 49. On July 15, 2010, final demand letters were sent to addresses in Palm Desert,
23 California and Las Vegas, Nevada.

24 50. On July 26, 2010, the final demand letter for the Palm Desert address was returned
25 because of a typographical error in the numerical portion of the address.

26 51. On August 4, 2010, a final demand letter with the correct address was mailed to
27 the Palm Desert address.

28 52. On July 22, 2010, the return receipt card was returned from the post office for

1 Palm Desert address.

2 53. On August 9, 2010, the return receipt card was returned from the post office for
3 the Las Vegas address.

4 **PRAYER**

5 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
6 and that following the hearing, the Director of the Office of Real Estate Appraisers issue a
7 decision

8 1. Revoking or suspending Tyler R. Gayler Certified Appraiser License Number
9 AR040746, issued to Tyler R. Gayler

10 2. Ordering Tyler R. Gayler to pay the Director of the Office of Real Estate Appraisers a
11 fine pursuant to section 11316(a); and

12 3. Taking such other and further action as deemed necessary and proper.

13
14 DATED: March 12, 2012

Original Signed

Elizabeth Seaters
Acting Chief of Enforcement
Office of Real Estate Appraisers
State of California
Complainant